

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SERGIO BONILLA, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

PEOPLECONNECT, INC., a Delaware
Corporation,

Defendant.

Case Nos: 1:21-cv-00051
 1:21-cv-00610

Judge Virginia M. Kendall

THERESA LOENDORF, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PEOPLECONNECT, INC., a Delaware
Corporation;

Defendant.

DECLARATION OF BENJAMIN R. OSBORN

I, Benjamin R. Osborn, declare:

1. I am an attorney representing Plaintiff Sergio Bonilla in this lawsuit.
2. Tara McGuane, the Associate Direct of Compliance and IP at PeopleConnect, Inc., filed a Declaration stating that Mr. Bonilla created his account with Classmates.com in December 2007. ECF No. 45-1 at 2.
3. As part of my investigation of this lawsuit, on June 5, 2021, and again on June 7, 2021, I searched the Internet Archive at archive.org/web (also known as the “wayback machine”) for screenshots showing what the registration process for Classmates.com looked like in December 2007.
4. I located three screenshots of pages showing the Classmates registration process as it existed in late 2004. All three screenshots are from September 2004. Exhibit 1.
5. None of the three pages include text or any other indication that by registering an account with Classmates, the user was agreeing to a Terms of Service (“TOS”). *Id.*
6. On all three pages, there is only a single reference to the TOS: a hyperlink labelled “Terms of Service” in small font at the bottom of the page, adjacent to hyperlinks connecting to other parts of the site. *Id.* There is no indication the user was asked to review the TOS before proceeding with registration, and no indication a user registering with the site was ever shown the TOS as part of creating her account. *Id.*
7. As part of my investigation of this lawsuit, on April 16, 2021, I created an account on Classmates.com using the email address ben.whipple42@gmail.com. I created the account for the purpose of investigating current and prospective clients’ claims against Classmates.com.

8. The current Classmates Terms of Service (“TOS”) contains a clause entitled “Arbitration Opt-Out” that purports to allow any user to opt-out of the arbitration clause. The clause states in its entirety:

ARBITRATION OPT-OUT. You have the right to opt-out and not be bound by this arbitration provision by sending written notice of your decision to opt-out to: PeopleConnect Arbitration Opt-Out, 1501 Fourth Avenue, Suite 400, Seattle, WA 98101. This notice must be sent within thirty (30) days of your first use of the Services or, if you are already a user of the Services upon initial release of this arbitration provision, within thirty (30) days of our email notice to you of that initial release.

The opt-out notice must state that you do not agree to this agreement to arbitrate and must include your name, address, phone number and email address(es) used to register with or use the Services. You must sign the opt-out notice for it be effective. Any opt-out not received within the applicable thirty (30) day period set forth above will not be valid.

If you opt-out of the agreement to arbitrate, you and the PeopleConnect Entities agree that any Disputes will be resolved by a state or federal court located in King County, Washington, and you consent to the jurisdiction and venue of such court.

Declaration of Tara McGuane, ECF No. 45-1 at 23.

9. On April 16, 2021, I mailed an opt-out notice to Classmates.com. Exhibit 2 (photograph of notice and envelope). The notice complied with the requirements Classmates described in the TOS. I addressed the envelope as specified; I sent it within 30 days of creating the account; I stated that I did not agree to arbitrate; I included my phone number and email address; and I signed the notice. *Id.*

10. Classmates responded to my attempt to opt-out of arbitration by terminating my account without warning and without any means of redress.

11. On Thursday, April 22, 2021, five days after I sent the opt-out notice, Classmates sent an email to ben.whipple42@gmail.com informing me that my “Classmates registration has been removed as requested.” Exhibit 2 (screenshot of email from membercare@classmates.com).

12. Contrary to Classmates' statement, at no time did I request my registration be removed.

13. As of April 22, 2021, the account associated with ben.whipple42@gmail.com has been terminated, and I am no longer able to log in to Classmates using that account.

14. The above-stated facts show that the opt-out procedures described in Classmates' TOS are illusory. While Classmates represents that users may opt-out of arbitration and continue using the site, in fact Classmates responds to opt-out request by immediately terminating user accounts.


I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I executed this Declaration on June 7, 2021, in Brooklyn, New York.


A handwritten signature in blue ink, appearing to read "Benjamin R. Osborn", is written over a horizontal line.

Benjamin R. Osborn


Exhibit 1**Classmates Registration Page #1, as of September 24, 2004**

INTERNET ARCHIVE <http://www.classmates.com/cmo/reg/school/index.jsp?sessionId=UQH2PQYCK5JWGCQKWZTSXDQKBK1GQIV3> Go AUG **SEP** OCT
 1 capture 24 Sep 2004 2003 **2004** 2005

 **classmates.com**







Millions of Friends & Growing

 **I graduated in:** (Select your state)

UNITED STATES

Alabama	Kentucky	North Dakota
Alaska	Louisiana	Ohio
Arizona	Maine	Oklahoma
Arkansas	Maryland	Oregon
California	Massachusetts	Pennsylvania
Colorado	Michigan	Rhode Island
Connecticut	Minnesota	South Carolina
Delaware	Mississippi	South Dakota
District of Columbia	Missouri	Tennessee
Florida	Montana	Texas
Georgia	Nebraska	Utah
Hawaii	Nevada	Vermont
Idaho	New Hampshire	Virginia
Illinois	New Jersey	Washington
Indiana	New Mexico	West Virginia
Iowa	New York	Wisconsin
Kansas	North Carolina	Wyoming

 [Canada](#)  [Germany](#)

 [Overseas American / Canadian Schools](#)  [Sweden](#)

[Terms of Service](#) | [Updated Privacy Policy](#) | [About](#)
 Copyright © 1996-2004 Classmates Online, Inc. All Rights Reserved.

Already Registered?
[Log in here.](#)
[I forgot my password.](#)

You can also join our
[college directory.](#)
[work & careers directory.](#)
[military directory.](#)

It's Free!
 * 130,000 schools
 * 38 million friends!
 * Find old friends
 * Reunion updates
 * Lively message boards

Leap through a portal to the best of your past.
Rediscover the people, places, and pop culture of your youth. **Reconnect** with the past and build friendships for the future.

Classmates Registration Page #2, as of September 18, 2004

INTERNET ARCHIVE

waybackmachine

1 capture

18 Sep 2004

http://www.classmates.com/cmo/reg/work/index.jsp;sessionId=JJDEZ1HWEPSNKCQKWZUSQCQKBK1GUIV3

Go

AUG

SEP

OCT

18

2003

2004

2005

 **classmates.com**

 **welcome to work&careers**
You never know who you know...

*With millions of companies
in the Work & Careers Community -
and more being added every day - you're bound to reconnect
with former co-workers and colleagues!*

Type the company name

Select a state or province for the company

Select a State

continue

Already Registered?
[Log in](#) | [Forgot my password](#)

Want to register in another community?

- [School](#)
- [College](#)
- [Military](#)

[Terms of Service](#) | [Updated Privacy Policy](#) | [About](#)

Copyright © 1996-2004 Classmates Online, Inc. All Rights Reserved.

Classmates Registration Page #3, as of September 6, 2004

INTERNET ARCHIVE Wayback Machine	1 capture 6 Sep 2004	<input "="" type="text" value="http://www.classmates.com/cmo/reg/military/index.jsp?affiliationId=&type=Reg&keyValue=412471&nodeId=DN31_unit&parent="/>	<input type="button" value="Go"/>	AUG SEP OCT 2003 06 2004 2005
--	---	---	-----------------------------------	--



Military Registration

Select Unit

[OVERSEAS](#) > [TURKMENISTAN](#) > [AMERICAN EMBASSY, ASHGABAT](#)

[OTHER](#)

[Terms of Service](#) | [Updated Privacy Policy](#) | [About](#)
Copyright © 1996-2004 Classmates Online, Inc. All Rights Reserved.

Exhibit 2

OPT-OUT NOTICE

I am writing to opt-out of the arbitration provision contained in the "Classmates Terms of Service", as provided in Section 13 of that Terms of service.

I do not agree to the agreement to arbitrate.

Name: Ben Osborn

Address: 102 Bergen St. Apt 4, Brooklyn, NY 11201

Phone number: (347) 645-0464

Email address: ben.whipple42@gmail.com

Dated: April 16, 2021

Signed:

Ben Osborn

*Osborn
Bergen St. Apt 4
Brooklyn, NY 11201*

*People Connect Arbitration Opt-Out
1501 Fourth Avenue, Suite 400
Seattle, WA 98101*



5/12/2021

Gmail - Your Member Care Inquiry



Benjamin Whipple <ben.whipple42@gmail.com>

Your Member Care Inquiry

1 message

Classmates <membercare@classmates.com>
Reply-To: Classmates <membercare@classmates.com>
To: "ben.whipple42" <ben.whipple42@gmail.com>

Thu, Apr 22, 2021 at 2:03 PM

##- Please type your reply above this line -##

Peggy (Classmates)

Apr 22, 2021, 11:03 MST

Hi Ben,

Thank you for your recent letter regarding your membership. I'm more than happy to assist you.

Your free Classmates registration has been removed as requested.

Please disregard any residual emails from us over the next 10 days or so, since some email might already be scheduled for delivery.

In the future, if you find yourself wanting to reconnect with high school friends and memories, we hope you'll give [Classmates.com](https://www.classmates.com) another try.

Sincerely,

Peggy
Support Specialist
Classmates.com

This email is a service from Classmates.